

Order

Entered: April 30, 2003

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

1998-50
2001-19

Amendment of Rules 3.903, 3.922, 3.935,
3.943, 3.945, 3.965, 3.972, 3.977, 3.980,
3.982, 6.903, 6.931, 6.933, and 6.937
of the Michigan Court Rules

On February 4, 2003, the Court entered an order adopting new subchapter 3.900 of the Michigan Court Rules, deleting subchapter 5.900, and amending the rules in subchapter 6.900, all regarding proceedings involving juveniles. This order corrects the following provisions of those rules, as of their effective date of May 1, 2003:

MCR 3.903(D)(8)(m) is amended as follows:

possession, manufacture, or delivery of, or possession with intent to manufacture or deliver, 650 grams (1,000 grams beginning March 1, 2003) or more of any schedule 1 or 2 controlled substance, MCL 333.7401, 333.7403;

MCR 3.922(E)(1)(c) is amended as follows:

use a videotaped deposition as permitted by law.

MCR 3.935(B)(1) is amended as follows:

The court shall determine whether the parent, guardian, or legal custodian has been notified and is present. The preliminary hearing may be conducted without a parent, guardian, or legal custodian present, provided a guardian ad litem or attorney appears with the juvenile.

MCR 3.943(A) is amended as follows:

General. A dispositional hearing is conducted to determine what measures the court will take with respect to a juvenile and, when applicable, any other person,

once the court has determined following trial or plea that the juvenile has committed ~~of~~ an offense.

MCR 3.945(A)(1) is amended as follows:

Generally. The court must conduct periodic hearings to review the dispositional orders in delinquency cases in which the juvenile has been placed outside the home. Such review hearings must be conducted at intervals designated by the court, or may be requested at any time by a party or by a probation officer or caseworker. The victim has a right to make a statement at the hearing or submit a written statement for use at the hearing, or both. At a dispositional review hearing, the court may modify or amend the dispositional order or treatment plan to include any disposition permitted by MCL 712A.18 and MCL 712A.18a or as otherwise permitted by law. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply.

MCR 3.965(E)(1) is amended as follows:

that the agency designated to care and supervise the child will prepare an initial service plan no later than 30 days ~~of~~ after the placement;

MCR 3.972(C)(2)(c) is amended as follows:

If the child has not testified, a statement denying such conduct may ~~by~~ be admitted to impeach a statement admitted under subrule (2)(a) if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement denying the conduct provide adequate indicia of trustworthiness.

MCR 3.977(G) is amended as follows:

Termination of Parental Rights; Other. If the parental rights of a respondent over the child were not terminated pursuant to subrule (E) at the initial dispositional hearing or pursuant to subrule (F) at a hearing on a supplemental petition on the basis of different circumstances, and the child is within the jurisdiction of the court, the court must, if the child is in foster care, or may, if the child is not in foster care, following a dispositional review hearing under MCR 3.975, a progress review ~~hearing~~ under MCR 3.974, or a permanency planning hearing under MCR 3.976, take action on a supplemental petition that seeks to terminate the parental rights of a respondent over the child on the basis of one or more grounds listed in MCL 712A.19b(3).

MCR 3.980(B) and (C) are amended as follows:

(B) Emergency Removal.

- (1) An Indian child who resides or is domiciled on a reservation, but is temporarily located off the reservation, must not be removed from a parent or Indian custodian unless the removal is to prevent imminent physical harm to the child.
- (2) An Indian child not residing or domiciled on a reservation may be temporarily removed if reasonable efforts have been made to prevent removal of the child, and continued placement with the parent or Indian custodian would be contrary to the welfare of the child.

(C) Removal Hearing.

- (1) After Emergency Removal. If an Indian child is removed under subrule (B)(1) or (2), a removal hearing must be completed within 28 days of removal from the parent or Indian custodian.
- (2) Non-Emergency Removal. Except in cases of emergency removal under subrules (B)(1) or (2), a removal hearing must be completed before an Indian child may be removed from the parent or Indian custodian.
- ~~(+)~~ (3) Evidence. ~~(a)~~ An Indian child must not be removed from a parent or Indian custodian, or, for an Indian child removed under subrules (B)(1) or (2), remain removed from a parent or Indian custodian pending further proceedings, without clear and convincing evidence, including the testimony of at least one expert witness who has knowledge about the child-rearing practices of the Indian child's tribe, that services designed to prevent the break up of the Indian family have been furnished to the family and that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical injury to the child.
- ~~(b)~~ Evidence at the removal hearing must include the testimony of expert witnesses who have knowledge about the child-rearing practices of the Indian child's tribe.
- (4) A removal hearing may be combined with any other hearing.
- ~~(2)~~ (5) [Redesignated, but otherwise unchanged.]

MCR 3.982(A) is amended as follows:

In General. A minor personal protection order is enforceable under MCL 600.2950(22), (25), 600.2950a(19), (22), 764.15b, and 600.1701 *et seq.* For the purpose of MCR ~~53.981-53.989~~, “minor personal protection order” includes a foreign protection order against a minor respondent enforceable in Michigan under MCL 600.2950/.

MCR 6.903(H)(16) is amended as follows:

possession of [MCL 333.7403(2)(a)(i)] or manufacture, delivery, or possession with intent to manufacture or deliver of 650 grams (1,000 grams beginning March 1, 2003) or more of a schedule 1 or 2 controlled substance [MCL 333.7401(2)(a)(i)];

MCR 6.903(I)(4) is amended as follows:

an object or device that is used or fashioned in a manner leading a person to believe the object or device is an object or device described in ~~subsections (a) through (c)~~ subrules (1)-(3).

MCR 6.903(I)-(L), defining “Magistrate,” “Progress report,” “Social report,” and “State wardship,” are redesignated as subrules (J)-(M), but are otherwise unchanged.

MCR 6.931(E)(3) is amended as follows:

Alternative Sentences For Juveniles Convicted of Certain Controlled Substance Offenses ~~Possession of 650 Grams or More of Schedule 1 or 2 Narcotics or Cocaine.~~ If a juvenile is convicted of a violation or conspiracy to commit a violation of MCL 333.7403(2)(a)(i), the court shall determine whether the best interests of the public would be served by:

MCR 6.933(C)(1) is amended as follows:

Controlled Substance Violation Punishable by Mandatory Nonparolable Life Sentence For Adults. A juvenile who was placed on probation and committed to state wardship for manufacture, delivery, or possession with the intent to deliver 650 grams (1,000 grams beginning March 1, 2003) or more of a controlled substance, MCL 333.7401(2)(a)(i), may be resentenced only to a term of years ~~or to a parolable life sentence~~, following mandatory revocation of probation for commission of a subsequent felony or a misdemeanor punishable by more than one year of imprisonment.

MCR 6.937(A)(3) - "Findings; Criteria," is redesignated as subrule (A)(4), but is otherwise unchanged.

STAFF COMMENT: The April 30, 2003, order makes corrections to a number of the rules governing proceedings regarding juveniles that had been adopted on February 4, 2003. The changes are effective May 1, corresponding to the effective date of the February 4 amendments. In addition to these changes, a number of corrections of punctuation and capitalization and changes in the Notes that accompanied the rules have been made and will appear in the published version of the rules.

The amendments of MCR 3.903(D)(8)(m), 6.903(H)(16), 6.931(E)(3), and 6.933(C)(1) conform the rules to 2002 PA 665, which changed the amounts of controlled substances required for certain violations. See MCL 333.7401(2)(a)(i), 333.7403(2)(a)(i). MCR 6.933(C)(1) is also modified in light of *People v Valentin*, 457 Mich 1 (1998).

The amendment of MCR 3.935(B)(1) corrects the inadvertent omission of references to guardians and legal custodians.

The amendments of MCR 3.922(E)(1)(c), 3.943(A), 3.945(A)(1), 3.965(E)(1), and 3.972(C)(2)(c) correct minor errors in wording.

The amendment of MCR 3.977(G) deletes the word "hearing" in the reference to progress reviews. Under MCR 3.974(A)(1), progress reviews do not require hearings.

The amendment of MCR 3.980(B) and (C) revise the provisions on removal of American Indian children from the home to clarify the distinction between emergency removals and removals after hearing.

The amendments of MCR 3.982(A), 6.903(I)-(L) and 6.937(A) correct cross-reference, citation and numbering errors.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.